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November 16, 2015

Via ECF

Honorable Thomas P. Griesa
United States District Court
Southern District of New York
500 Pearl Street, Room 1630
New York, NY 10007-1312

**Re: *GoodWorldCreations LLC d/b/a Crowdnetic v. Albright*, No. 14-CV-03848 –
Letter Motion to Set Date for Completion of Fed. R. Civ. P. 26(a)(1)
Exchanges**

Dear Judge Griesa:

We represent defendant and counterclaim plaintiff Dara Albright in the above-referenced action. This action was commenced on May 30, 2014, and this action has been at issue since August 2015. No discovery has been commenced by either party other than a single party deposition, currently noticed for December 16, 2015.

We bring this Letter Motion for the sole purpose of requesting the Court to set a date by which the parties must exchange the documents and information pursuant to Fed. R. Civ. P. 26(a)(1). *Despite multiple written requests by the undersigned to counsel for plaintiffs and counterclaim defendants, commencing on November 3, 2015, opposing counsel has refused to stipulate to any Rule 26(a)(1) exchange date whatsoever.* Hence, the necessity for this Letter Motion for this limited purpose.

Relevant Procedural History

Following is the relevant procedural history:

October 2, 2015 – The Initial Pretrial Conference was held before Your Honor. The parties stipulated that motion practice and discovery would be stayed pending the commencement and

conclusion of a settlement conference before a U.S. Magistrate Judge. Following is the Minute Order entered by the Court on October 2, 2015.

“The Court stays the filing of any dispositive motions by plaintiff as well as any requests of discovery demands by defendant/counter-claimant pending the outcome of settlement before a U.S. Magistrate Judge. The Court will issue an Order of reference, on notice. (No transcript taken.) (Zaepfel, Kenneth). (Entered: 10/02/2015)”

October 30, 2015 – A Settlement Conference was held before Magistrate Judge Gorenstein and concluded on that date. Following is the Minute Order entered by Magistrate Judge Gorenstein on October 30, 2105 following the conclusion of the Settlement Conference.

“Minute Entry for proceedings held before Magistrate Judge Gabriel W. Gorenstein: Settlement Conference held on 10/30/2015. (sg) (Entered: 11/02/2015)”

November 3, 2015 – Following the conclusion of the Settlement Conference on October 30, 2015, I contacted opposing counsel, Usher Winslett, by email to set an outside date for the Rule 26(a)(1) exchange. I proposed that this outside date be November 30, 2015. I also requested Mr. Winslett to provide me with available dates during the week of December 7 and 14 to set the oral deposition of Alice (Luan) Cox, counterclaim defendant. Following is a true and complete copy of the text of this email.

Dear Usher,

This letter addresses two issues.

First, pursuant to Rule [26] the parties are required to exchange documents, witness lists and other pertinent information at the outset of discovery in order to facilitate the discovery process. Though we had initially agreed on the date of October 9, this date was suspended by reason of our agreement to submit to a settlement conference, which was completed on October 30. I propose set November 30 as the date by which Rule 26 information is to be exchanged.

Second, we will be noticing the party deposition of Luan Cox in December. Kindly provide one or more dates during the weeks of December 7 or 14 when both you and Ms. Cox will be available. I expect the deposition to take approximately 1.5 days. If you prefer, we can conduct the deposition at your offices if this would be more convenient for you and your client.

This simple request to provide an outside date for the Rule 26 exchange was repeated in writing multiple times through and including Friday, November 13. Opposing counsel refuses to agree to any date for this exchange.

Though not the subject of this Letter Motion, I wish to inform the Court that opposing counsel did not initially respond to my November 3 request to set a date for the oral deposition of his client. Thus, this deposition was duly noticed for December 16, 2015. On Friday, November 13, Mr. Winslett advises for the first time that his client is “unavailable” on December 16. Mr. Winslett, however, continues to fail to provide any alternative dates.

Request for Relief – Setting a Rule 26(a)(1) Exchange Date Deadline

There is no *bona fide* reason for opposing counsel to refuse to cooperate with setting a date for a Rule 26(a) exchange. By the terms of Your Honor’s October 2 Minute Order, entered upon a stipulation between counsel in Your Honor’s Chambers, the stay of discovery automatically terminated upon conclusion of the October 30, 2015 Settlement Conference. My November 3, 2015 letter to Mr. Winslett confirms what the parties understood on October 30 – the Settlement Conference was “completed.”

As we have also noticed a party deposition for mid-December, and in any event, we wish to commence and complete this initial deposition by December 31, 2015, we request that the Rule 26(a) exchange date allow sufficient time to review these documents prior to the current deposition notice date, December 16. In this regard, although opposing counsel belatedly objects to this deposition date on November 14, he has failed to provide any alternative date, and we expect that no date will be acceptable to his client unless ordered by this Court.

I also wish to remind the Court that prior to the parties’ agreeing to a stay of discovery pending completion of the Settlement Conference, the parties had agreed to complete the Rule 26(a) exchange by October 9, 2015, as reflected in the Initial Pretrial Report filed with the Court in connection with the October 2, 2015 Pretrial Conference.

Respectfully submitted,

GUZIK & ASSOCIATES



By:

Samuel S. Guzik

cc: Usher Winslett
Via ECF